

APPELLATE TRIBUNAL INLAND REVENUE OF PAKISTAN
DIVISION BENCH, MULTAN

ITA No.116/MB/2025

Tax Year: 2023

Mr. Abdul Wahab,
Block No.36, Near Railway Pully,
Dera Ghazi Khan.

Reg. No.3210250483427

...Appellant

Versus

The CIR, RTO, Multan

...Respondent

Appellant by: Mr. Anwaar Khalid, Adv
Respondent by: Mr. Umair Shafqat, DR

Date of Hearing: 12.03.2026
Date of Order: 12.03.2026

ORDER



MIAN ABDUL BASIT(MEMBER): The appellant/taxpayer has filed this appeal against the impugned order passed by the Assessing Officer Multan on 24.10.2024 for Tax Year 2023 under section 161 of the Income Tax Ordinance, 2001 (**the Ordinance, 2001**), whereby a tax demand amounting to Rs.42,384,643/- was created.

2. Per the facts as narrated in the impugned order, the taxpayer, being an individual as well as a withholding agent, was under a statutory obligation to deduct and deposit withholding tax in accordance with the provisions of Section 153(1)(a), Section 236H, and other relevant provisions of the Income Tax Ordinance, 2001 for the Tax Year 2023. During the course of monitoring and verification by the tax authorities, it transpired that the taxpayer had failed to deduct and/or deposit the requisite withholding tax into the Government treasury. This omission constituted a clear and serious violation of the applicable tax laws. Consequently, a show cause notice, followed by subsequent reminders, was duly issued and served upon the taxpayer; however, no response or compliance was received within the stipulated time.

In view of the persistent non-compliance, the Assessing Officer proceeded to finalize the proceedings ex parte and passed an Order-in-Original (OIO) dated 24.10.2024. Through the said order, a tax demand amounting to Rs.42,384,643/- was created for the Tax Year 2023, primarily on the ground that the taxpayer had failed to deduct and deposit withholding tax on sales as mandated under Section 236H of the Ordinance, 2001. Aggrieved by the aforesaid order, the taxpayer preferred a first appeal before this Tribunal, which has culminated in the present appellate proceedings.

3. On the fixed date Mr. M. Anwaar Khalid, Advocate (**AR**) attended the proceedings on behalf of the appellant/taxpayer. Whereas Mr. Umair Shafqat, DR appeared on behalf of the tax department.

4. The learned AR submitted that the impugned order is legally untenable, being contrary to both the facts on record and the provisions of the Ordinance, 2001, and that the creation of demand under sections 161 and 205 is arbitrary, based on conjectures rather than the declared figures in the return. He contended that the appellant neither qualifies as a "prescribed person" under section 153(7) nor was liable to deduct withholding tax, while the respondent also failed to comply with mandatory procedural requirements, including Rule 44 as laid down in the case of CIR vs MCB (2021 SCMR 1325). The learned AR argued that the appellant, being a member of an Association of Persons (AOP), had only declared his share of income from the AOP in his return; therefore, no question arises regarding withholding of tax on expenses at his individual level. and The AR further argued that the alleged defaults were wrongly computed on estimated and worked-back figures instead of actual declared amounts, and that the ex parte order, passed without proper service and on a date not fixed for hearing (2012 PTD 202), is void ab initio and liable to be quashed.



5. In rebuttal, the learned DR contended that the appellant, being an identifiable withholding agent, was independently liable to comply with withholding tax obligations irrespective of his membership in an AOP, and mere declaration of share income does not absolve such statutory duties. He argued that the record clearly reflects failure to deduct and deposit tax as required under the relevant provisions, and therefore, the action of the department in creating demand is lawful and justified.

6. We have given due consideration to the submissions advanced by both the parties and have also perused the order passed by the Assessing Officer under section 161(1A) of the Ordinance, 2001. The Assessing Officer proceeded on the premise that the appellant had made purchases from Coca-Cola Beverages Pakistan Limited amounting to Rs.696,224,000/- and subsequently effected supplies without deducting withholding tax under section 153 read with section 236H of the Ordinance, 2001, thereby treating the appellant as a defaulter and creating a demand of Rs.27,848,960/- .However, upon examination of the record, we find that the foundational assumption of the Assessing Officer is factually flawed. The appellant has consistently maintained that he is merely a member of an Association of Persons (AOP) and has declared only his share of income from the AOP in his return for Tax Year 2023, reflected under the relevant column. The return on record shows that the appellant declared share income amounting to Rs.2,365,937/-, and there is no disclosure of any business activity involving purchases, sales, or expenses attracting withholding tax obligations under section 153 of the Ordinance, 2001.

7. The learned AR has further substantiated this position by producing the return of income filed by the AOP, wherein the purchases of Rs.696,224,000/- have been duly declared. Significantly, this figure exactly corresponds to the amount attributed by the Assessing Officer to the



appellant. This clearly establishes that the Assessing Officer has erroneously transposed the transactions of the AOP onto the appellant without any legal or factual basis. The subsequent "reverse calculation" of sales and the determination of withholding tax liability is, therefore, not only misconceived but also arbitrary and unsustainable in law.

8. It is a settled principle that liability under section 161 arises only where a person, being under a legal obligation to deduct tax, fails to do so in respect of transactions actually undertaken by him. In the present case, the appellant neither carried out the impugned transactions nor was there any material on record to demonstrate that he acted as a withholding agent in his individual capacity. The failure of the Assessing Officer to examine the return of income of the appellant and to distinguish between the legal identity of the AOP and its members reflects a lack of proper application of mind and renders the proceedings legally defective.

9. In view of the above facts and legal position, we hold that the entire demand has been raised on incorrect and borrowed figures pertaining to a separate taxable entity, i.e., the AOP, and not the appellant. Consequently, the impugned order is found to be legally and factually untenable, arbitrary, and without lawful authority. **The same is hereby annulled, and the appeal filed by the appellant stands allowed.**

10. This order consists of four (04) pages, and I have affixed my signature on each page.




KHURRAM SHAHBAZ BUTT
Member


MIAN ABDUL BASIT
Member